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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DONALD COLE BURCHETT,

                Plaintiff,

      v.

JEFFREY RAMSDELL, et al.,

                Defendants.

CASE NO. C05-1316-JCC

ORDER

        This matter comes before the Court on Plaintiff's suit alleging violation of his civil rights under 42 U.S.C. § 1983 (Dkt. No. 4), the Report and Recommendation of United States Magistrate Judge James P. Donohue ("R&R") (Dkt. No. 5), and Plaintiff's objections to the R&R (Dkt. No. 8). Having reviewed the materials submitted by the parties and the record, and determined that oral argument is not necessary, the Court hereby finds and rules as follows:

I.   BACKGROUND

        On July 26, 2005 Plaintiff, proceeding *pro se* and *in forma pauperis*, submitted this civil rights complaint alleging that, while facing criminal charges in King County Superior Court, his constitutional rights were violated by the Honorable Jeffrey Ramsdell, judge, Kelly Grace, prosecutor, and Bruce Shamulka, public defender assigned to his case. (Compl. 3). Plaintiff appears to allege that he was

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1   convicted without being tried or pleading guilty, that the prosecutor filed a plea agreement containing

2   false charges, and that his public defender approved the judgment and sentence even though he knew that

3   the Plaintiff had not been tried or had not accepted the plea agreement. (*Id.*). Plaintiff is asking for $30

4   million for the past five years of allegedly false imprisonment due to the actions of the Defendants and

5   $500,000 for emotional distress. (*Id*. at 4).

6   Judge Donohue recommends in his R&R that Plaintiff's claims be dismissed for failure to state a

7   claim for which relief can be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Judge Donohue also

8   recommends that this dismissal count as a "strike" under 28 U.S.C. § 1915(g).

9   **II.   ANALYSIS**

10   This Court reviews the record *de novo* when considering objections to a magistrate judge's report

11 and recommendation. *See* 28 U.S.C. § 636(b)(1).

12   Plaintiff does not state a claim for which relief can be granted because Defendant Honorable

13 Jeffrey Ramsdell and Defendant Kelly Grace are immune from § 1983 liability in their official roles as

14 judge and prosecutor, respectively. *Fry v. Melaragno*, 939 F.2d 832, 836 (9th Cir. 1991) (The Supreme

15 Court has granted absolute immunity to judges and prosecutors.) (citing *Mitchell v. Forsyth*, 472 U.S.

16 511, 520 (1985)). Furthermore, Plaintiff's objections to Judge Donohue's R&R do not rebut the

17 axiomatic conclusion that absolute immunity of judges and prosecutors is necessary for the appropriate

18 exercise of the functions served by those officials in criminal prosecutions. *See Fry*, 939 F.2d at 837 n.6

19 (The Supreme Court employs a functional approach to determine immunity, under which the effects of

20 the exposure to liability on the functions of the particular official are evaluated.).

21   Plaintiff's allegations against public defender Bruce Shamulka also do not state a claim for which

22 relief can be granted because the public defender was not acting under the color of state law within the

23 meaning of § 1983. *Polk County v. Dodson*, 454 U.S. 312, 320-25 (1981). In his objections, Plaintiff

24 does not rebut the argument that public defenders, by their very nature, cannot be acting under state law

25 in their representation of indigent defendants for the purposes of § 1983 since they are acting as

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1 advocates, as was Plaintiff's attorney in this case. *See Polk County*, 454 U.S. at 320-25.

2   For these reasons, it is hereby ORDERED:

3 (1) The court ADOPTS the Report and Recommendation.

4 (2) Plaintiff's complaint is DISMISSED for failure to state a claim upon which relief can be granted under

5 28 U.S.C. § 1915(e)(2)(B)(ii).

6 (3) This dismissal shall count against Plaintiff under 28 U.S.C. § 1915(g).

7 (4) The Clerk is directed to send copies of this Order to Plaintiff and to Judge Donohue.

8   SO ORDERED this 27th day of September, 2005.

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11   John C. Coughenour

12   United States District Judge

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